

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT D. POLZER,

Plaintiff,

13cv0295

**ELECTRONICALLY FILED**

v.

ALLEGHENY COUNTY, DANIEL  
KOVACS,

Defendants.

**MEMORANDUM ORDER RE: PLAINTIFF'S MOTION FOR LEAVE TO FILE A  
SECOND AMENDED COMPLAINT (DOC. NO. 31) AND DEFENDANTS' MOTION TO  
DISMISS (DOC. NO. 27)**

On February 27, 2013, Defendants filed a Notice of Removal from the Court of Common Pleas of Allegheny County. Doc. No. 1. Plaintiff (who was then represented by former counsel Attorney Weinberg) had filed claims against Allegheny County and Daniel Kovacs, a correctional officer at the Allegheny County Jail related to an alleged attack on Plaintiff on January 9, 2010, while he was incarcerated. Doc. No. 1-1. An Initial Case Management Conference was held by this Court in early May 2013, after which the Court entered a Case Management Order and Pretrial Order so that an efficient and just resolution of the case could occur. Doc. Nos. 6 and 7.

Following several *pro se* filings by Plaintiff, including a Motion for Appointment of Counsel, the Court conducted a Status Conference on July 19, 2013. Doc. Nos 15-17 and 23. During said conference and based on Plaintiff's motion, Attorney Weinberg withdrew from the case and Attorney Fryncko entered his appearance on Plaintiff's behalf. *Id.* Plaintiff was given leave to file an Amended Complaint, which he did through new counsel on August 16, 2013.

Doc. No. 26. Shortly thereafter, Defendants filed a Motion to Dismiss. Doc. No. 27. A response to said Motion was due to be filed on October 18, 2013. 09/04/13 Text Order. On October 18, 2013, Plaintiff filed a Motion for Leave to File a Second Amended Complaint. Doc. No. 31.

Plaintiff's Motion will be denied as untimely. Granting said Motion, filed after the close of discovery on October 8, 2013, would disrupt the efficient resolution of the issues before the Court. Per the Court's Case Management Order, amended pleadings were due to be filed on or before June 21, 2013. Doc. No. 7. Plaintiff was given leave to file a First Amended Complaint after this deadline, which Plaintiff did. Doc. No. 26. Plaintiff's proposed second Amended Complaint, contained within Plaintiff's pending Motion, does not add new Defendants or substantive claims, but rather, sets forth additional factual averments related to alleged specific instances of excessive force and an allegation that Allegheny County was aware of and condoned those actions. Doc. No. 31. These facts, if supported with discovery, can be used to defend any Motion for Summary Judgment that may be filed and/or presented to the jury during trial (set to begin on March 3, 2014). Therefore, Plaintiff will not be prejudiced by the denial of this Motion.

Also before this Court is Defendants' Motion to Dismiss. Doc. No. 27. Defendants move this Court to dismiss certain of Plaintiff's claims and dismiss the case in its entirety against Allegheny County. Doc. No. 28. After review of Plaintiff's Amended Complaint and Defendants' Motion to Dismiss and brief in support thereof, the Court finds that Defendants' Motion to Dismiss shall be denied. It would be premature to dismiss any component of Plaintiff's Amended Complaint based solely on the factual averments contained therein, which must be taken as true in this context.

Therefore, the case will proceed based upon Plaintiff's Amended Complaint. Doc. No. 26. All dates set forth in the Court's Case Management Order and Pre-trial Order remain in effect, including the dates for the filing of any Motion(s) for Summary Judgment. Doc. Nos. 6-7. No extension of time will be granted as to these deadlines.

AND NOW, this 21<sup>st</sup> day of October, 2013, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to File Second Amended Complaint (Doc. No. 31) is **DENIED**;
2. Defendants' Motion to Dismiss (Doc. No. 27) is **DENIED**;
3. The case will proceed to trial as set forth in the Court's Case Management Order and Pre-trial Order (Doc. Nos. 6 and 7); and
4. The parties shall return for another mediation session before Judge Benson between November 7, 2013, and November 29, 2013, in accordance with the same terms set forth in the Stipulation Selecting ADR. Once the date is selected, notice shall be filed of the mediation date.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties